

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

May 20, 2002

GSBCA 15803-TRAV

In the Matter of ROBERT H. PASTERNAK

Robert H. Pasternack, Washington, DC, Claimant.

Daria M. Stec, Office of General Counsel, Department of Education, Washington, DC, appearing for Department of Education.

BORWICK, Board Judge.

Claimant Robert H. Pasternack, an official with the Department of Education, seeks reimbursement of actual expense subsistence (lodging) expense while on temporary duty (TDY) in Albuquerque, New Mexico. The agency rejected claimant's request because claimant had not received actual subsistence expense approval in advance of his trip and had not shown the requisite emergency or unexpected circumstances to justify a retroactive approval of actual subsistence expenses under established agency policy. The agency limited claimant's lodging reimbursement to the per diem rate shown on claimant's travel authorization. We deny the claim as the agency's determination was in accord with the Federal Travel Regulation (FTR) and was not an abuse of discretion.

The agency sent claimant on TDY from October 22 to October 27, 2001, from Washington, D.C. to Minneapolis, Minnesota, and then to Albuquerque, New Mexico, to attend the International Dyslexia Association Conference. For the Albuquerque portion of claimant's TDY, the agency's travel authorization granted claimant \$65 lodging per diem and \$38 for meals and incidental expenses (M&IE). The agency did not authorize lodging reimbursement on an actual expense basis.

Claimant says that employees on his staff requested Government rates for claimant's lodging in Albuquerque; however, there were no rooms available at Government rates at the hotel conference site. According to claimant, other hotels in the Albuquerque area also had no rooms at Government rates. Claimant states that his "staff failed to request prior approval of actual expenses because they were brand new to the job, were not fully aware of the procedure, and did not bring the matter to my attention until after the fact."

Claimant stayed at the hotel conference site in Albuquerque on the nights of October 24 through 26 and paid the daily conference rate of \$144 for his lodging. After returning to

Washington, D.C., claimant requested that the agency approve a retroactive amendment to the travel authorization granting actual expense travel for the Albuquerque portion of claimant's TDY. Claimant also requested reimbursement of an additional \$237, which is the difference between the total expense claimant incurred paying the \$144 conference rate for his three-night stay and the total expense the agency allowed based upon the \$65 per diem rate for claimant's three-night stay.

Applying agency policy, the agency disapproved claimant's request because claimant had not shown the required emergency or unexpected travel circumstances.

The pertinent part of the FTR provides:

Request for authorization of reimbursement under actual expense should be made in advance of travel. However, subject to your agency's policy, after the fact approvals may be granted when supported by an explanation acceptable to your agency.

41 CFR 301-11.302 (2001).

Here, agency policy in effect at the time of claimant's travel provided:

Actual subsistence reimbursement is used only when special circumstances exist which make per diem inadequate when travel is to an unusually expensive location. Use of actual subsistence **must be approved in advance** by the travel approving official or the Director, Financial Management Policies and Administrative Programs Group, depending on the amount of the increased daily subsistence. . . .

Reimbursements and after the fact requests for actual subsistence will only be allowed in emergency or unexpected travel situations.

Department of Education Desk Reference Guide at 35 (1998). The agency rejected claimant's request in this instance because claimant had not convinced the agency that the circumstances amounted to an emergency or an unexpected travel situation. The agency concluded that claimant knew that hotel rooms in the Albuquerque, New Mexico, area were not available at the Government per diem rate before claimant commenced his TDY, and claimant should have requested actual subsistence reimbursement in advance of his travel.

Both the FTR and the agency's policy grant discretion to agency officials in deciding whether retroactive reimbursement on an actual expense basis and after-the-fact requests for actual subsistence will be allowed. Under the FTR, the reasons must be "acceptable" to the agency. 41 CFR 301-11.302. Under the agency's policy, to grant a retroactive actual subsistence reimbursement request, agency officials must have been convinced that the circumstances leading to the request were the result of an emergency or were unexpected. We review agency determinations to disallow requests for retroactive actual subsistence for abuse of discretion. Harry Nadal, GSBCA 15416-TRAV, 01-2 BCA ¶ 31,451. Here the record shows that the lack of Government-rate hotel rooms in the Albuquerque, New Mexico, area during the dates of claimant's TDY was known to claimant before he went on his trip.

The agency did not abuse its discretion in determining that claimant's actual subsistence request was not allowable under agency policy guidelines.

The Board denies the claim.

ANTHONY S. BORWICK
Board Judge